

**DECISION - BOARD OF APPEAL CASE NO. 10-16**

**APPLICANT**

**STEPHEN KEARNS**

**LOCATION OF PROPERTY INVOLVED:**

**2 Adams Road, Walpole, MA  
Walpole Assessors Map 19, Parcel 70**

**APPLICATION:**

The grant of a SPECIAL PERMIT under Section 9 (Non-Conforming Situations) 4. (Nonconforming Buildings) A. (One-family or two-family dwelling) of the Zoning Bylaw to allow an extension and alteration of an existing non-conforming one-family dwelling (adding a garage, front porch, and second floor; and expanding an existing deck) as shown on a plan entitled: "Addition Plan No. 2 Adams Rd., Walpole, Mass." drawn by Antonio Land Surveyors, Inc., last revised 5/4/16, as may be amended, together with any other Special Permits or Variances the Board deems applicable.

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On June 22, 2016 a Public Hearing was held, in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zucker, Chairman  
James DeCelle, Vice Chairman  
Craig W. Hiltz, Clerk  
Susanne Murphy, Member  
Mary Jane Coffey, Member

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TOWN CLERK

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**VOTE OF THE BOARD:**

A motion was made by Mary Jane Coffey and seconded by Susanne Murphy, that the Board grant Stephen Kearns a Special Permit under Section 9 (Non-Conforming Situations) 4. (Nonconforming Buildings) A. (One-family or two-family dwelling) of the Zoning Bylaw to allow an extension and alteration of an existing non-conforming one-family dwelling (adding a garage, front porch, and second floor; and expanding an existing deck) as shown on a plan

entitled: "Addition Plan No. 2 Adams Rd., Walpole, Mass." drawn by Antonio Land Surveyors, Inc., last revised 5/4/16.

The vote was 5-0-0 in favor (Zucker, DeCelle, Hilz, Coffey, Murphy voting); therefore, the Special Permit under Section 9.4.A is hereby granted, subject to the following conditions:

- 1) The extension and alteration of the existing non-conforming one-family dwelling on the existing non-conforming lot shall be constructed in accordance with the plans submitted by the Applicant and no other relief is granted.
- 2) The Applicant shall meet with the Town Engineer and address the items set forth in the Town Engineer's letter dated June 7, 2016 to her satisfaction before the issuance of a final Certificate of Occupancy.

### **REASONS FOR DECISION**

It is the finding of the Board that the Applicant was able to meet the requirements of Section 9.4.A to allow the extension and alteration of his existing non-conforming one family dwelling and a non-conforming lot (noting that Section 9.5.B directs an Applicant to file for relief under Section 9.4.A). The Board finds that the resulting house is in character with, and follows the intent of, the General Residence District. Accordingly, the Board has determined that the Special Permit requested is warranted.

### **FURTHER FINDINGS**

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

**(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:**

**(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;**

The Board finds that the proposed extension to a single family dwelling on a non-conforming lot is in harmony with the purposes and intent of the By-Law. The proposed undertaking meets the criteria as stated in the Walpole Zoning By-Law and will be consistent with the character of the neighborhood which is residential in nature. As shown on the plan, the proposed construction does not create any new deviations from the Zoning By-Law and the By-Law specifically empowers the Board to grant the requested Special Permit to allow the proposed construction.

**(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;**

The Board finds that the ingress/egress access point (driveway) is merely moving it from one side of the dwelling to the other side but on the same street. The parking and driveway will have no adverse effect to pedestrian and vehicular movement so as to adversely affect the neighborhood. The proposed undertaking will neither impact the convenience and safety of vehicular and pedestrian traffic within the site nor affect the current conditions on adjacent streets. The volume of traffic will not change as a result of this renovation and will not have a significant impact on Adams Road. There should not be any adverse effect to adjacent roads as there are no additional new trips generated and the capacity of the road is sufficient.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

The Board finds that proposed extension and alteration to the existing dwelling on the existing non-conforming lot should not be an adverse affect to the neighborhood or school system. The proposed undertaking is specifically intended to allow the Applicant and his family to remain in their home. The addition is not designed to increase the number of residents. The single family home being residential in nature will have no employees or customers. As such, the Board finds that there is no adverse affect to the neighborhood and that this condition is met.

- (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The Board finds that as shown on the plans submitted with the Application, the existing non-conforming single family house on the non-conforming lot, conforms to the front and side setback as well as lot coverage. The Applicant is seeking a Special Permit under Section 9 of the By-Laws to allow an extension and alteration of the non-conforming dwelling subject to conditions imposed by the Zoning Board. There is no buffer zone required. Therefore, the Board is satisfied that this condition is met.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

The Board finds that the proposed extension and alteration to the existing dwelling on the existing undersized lot is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;**

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood. Therefore, this condition is satisfied.

- (g) shall not adversely effect the character of the immediate neighborhood; and**

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. The architectural plans show the house is being renovated in a tasteful manner that is consistent with the size and construction of the other houses in the neighborhood. As such, the proposed extension and alteration of a non-conforming one-family house on a non-conforming lot will not have an adverse effect to the character of the immediate neighborhood. Thus, this condition is satisfied.

**(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.**

The Board finds that the purpose of the Zoning By-Law in part states, "to encourage housing for persons of all income levels..." "to encourage the most appropriate use of the land". Clearly, the proposed extension and alterations of the dwelling are consistent with the purpose of the By-Law. The continued residential use will remain the same with the extension and alterations providing for the family living quarters. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the zoning by-law and this condition is satisfied.

**CONSISTENCY**

This decision is consistent with the purpose and intent of the Zoning Bylaws.

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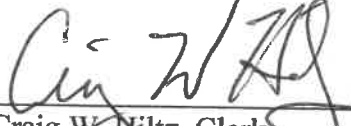
Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of

the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant.”

**APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.**

WALPOLE ZONING BOARD OF APPEALS

  
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Craig W. Hiltz, Clerk

CH/k:16-18

cc:    Town Clerk                      Engineering                      Planning Board  
       Board of Selectmen    Building Inspector            Conservation Commission

This decision was made on June 22, 2016 and filed with the Town Clerk on July 5, 2016